Supreme Court, U. S.
FILED
FEB 17 1977
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1140

In re DON YOUNG, BETTY YOUNG, JOHN EDMONSON, BARBARA EDMONSON, BOBBY McKEE, BARBARA McKEE, DON SPARKS and GWYN SPARKS,

*Petitioners,*

~~UNITED STATES OF AMERICA,~~

~~*Plaintiff-Respondents,*~~

v.

MIDLAND INDEPENDENT SCHOOL DISTRICT and JAMES H. MAILEY, SUPERINTENDENT,

Respondents

~~*Defendants.*~~

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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February 17, 1977

## INDEX


| | Page |
|---|---|
| OPINIONS BELOW | 2 |
| JURISDICTION | 2 |
| QUESTION PRESENTED FOR REVIEW | 2 |
| STATUTES | 2 |
| STATEMENT OF THE CASE | 4 |
| REASONS FOR GRANTING THE WRIT | 6 |
| CONCLUSION | 11 |


## APPENDIX


| | |
|---|---|
| Order Denying Mandamus | 1a |
| Petition for Mandamus | 2a |
| Judgment, U.S.D.C., W.D. Tex. Oct. 8, 1968 | 7a |
| Complaint, Aug. 24, 1970 | 12a |
| Consent Decree (Appr. U.S.D.C. W.D. Tex.) Sep. 16, 1976 | 22a |
| Answer of Midland School District, Aug. 24, 1970 | 27a |
| Text, 42 U.S.C. 2000c-6 | 33a |

## TABLE OF AUTHORITIES


| Cases: | Page |
|---|---|
| *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 96 S.Ct. 2697 (1976) | 8 |
| *Swann v. Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267 (1971) | 7, 10 |
| *United States v. Midland Independent School District*, 443 F.2d 1180 (5th Cir. 1971) | 6 |
| *United States v. Midland Independent School District*, 519 F.2d 60 (5th Cir. 1975) | 6 |
| *Wheeler v. Durham County Board of Education*, 521 F.2d 1136 (4th Cir. 1975) | 8 |

**Statutes:**

| | |
|---|---|
| United States Constitution, Article III, Section 2 | 2 |
| United States Constitution, Fifth Amendment | 2 |
| United States Constitution, Ninth Amendment | 3, 10 |
| United States Constitution, Fourteenth Amendment | 3, 7 |
| 28 U.S.C. § 1254(1) | 2 |
| 28 U.S.C. § 1343 | 3 |
| 42 U.S.C. § 2000c | 3 |
| 42 U.S.C. § 2000c-6 | 4, 10 |


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---

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

---

Petitioners pray that a writ of certiorari issue to review the denial of their petition for mandamus filed in the United States Court of Appeals for the Fifth Circuit which asserted that the District Court of the United States for the Western District of Texas lacked jurisdiction over a pending school desegregation action.

## OPINION BELOW

The order of the United States Court of Appeals for the Fifth Circuit in case No. 76-3974 was issued without opinion and has not been officially reported. A copy is annexed (App. 1a).

## JURISDICTION

The order sought to be reviewed was entered on November 19, 1976. No rehearing or request for extension of time within which to petition for certiorari has been requested. The jurisdiction of this court arises under 28 U.S.C. § 1254(1).

## QUESTION PRESENTED FOR REVIEW

Whether in the absence of any allegation of intervening change of circumstance, a federal district court has jurisdiction to enter a desegregation order in a second case against a school system after the same court had, two years earlier ruled that the same system had fully implemented a plan which satisfied the unitary standard established by this Court?

## STATUTES

United States Constitution, Article III

> "Section 2. The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States . . . ."

United States Constitution, Fifth Amendment

> "No person shall . . . be deprived of life, liberty or property, without due process of law; . . . ."



United States Constitution, Ninth Amendment

> "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

United States Constitution, Fourteenth Amendment

> "Section 1. No State shall . . . deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. § 1343

> "Civil Rights and elective franchise
>
> The district courts shall have original jurisdiction of any civil action authorized to be commenced by any person.
>
> . . .
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

42 U.S.C. § 2000c

> "Definitions
>
> As used in this subchapter –
>
> . . . .
>
> (b) 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex or national origin, but 'desegrega-

tion' shall not mean the assignment of students to public schools in order to overcome racial imbalance."

42 U.S.C. § 2000c-6

Civil Action by the Attorney General (complete text printed in Appendix at p. 33a)

"(a) Whenever the Attorney General . . . believes . . . that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized . . . to institute for and in the name of the United States a civil action . . . for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall . . . enlarge the existing power of the court to insure compliance with constitutional standards."

## STATEMENT OF THE CASE

In 1964 the Midland (Texas) Independent School District "with the guidance of the Department of Health, Education and Welfare" undertook to implement a desegregation plan applicable to both Chicano and Negro minorities. The plan required changes to be made in the assignment of students, employment of faculty and reorganization of the school curriculum and facilities. By letter dated July 19, 1968, H.E.W. approved the plan stating that its implementation would eliminate all vestiges of the dual school system.

A private desegregation action (C.A. 68-53-MO) was at that time pending against the Midland School District in



the United States District Court for the Western District of Texas. Based on the H.E.W. letter and evidence to establish the steps taken in compliance with the plan, the School District moved for summary judgment in its favor. No opposition was made to the motion.

The Court reviewed the evidence of compliance submitted by the District, made findings regarding the degree of accomplishment of each of the directed changes and on October 8, 1968 issued a judgment, (App. 7a) holding that

> "3. As a result of such plan, all vestiges of the dual school system in said District have been eliminated and a unitary school system now exists."

No appeal from that judgment was ever taken and it became final on November 7, 1968.

On August 24, 1970, a substantially identical desegregation suit was filed by the Attorney General against the Midland School District in the same court (App. 12a) *United States v. Midland Independent School District* (C.A. No. MO-70-CA-67). No mention was made in the complaint about the prior suit, no motion was made to reopen it, no allegation suggested that Midland had in any way changed its school organization after 1968, and the claims of discrimination were grounded on the same pre-existing dual school system in Texas as had based the prior suit. As part of its defense to the second suit the school board pleaded the prior judgment and asserted a lack of jurisdiction in the District Court, (App. 32a).

In the second case the District Court denied the relief requested by the Attorney General. The U.S. Court of

Appeals for the Fifth Circuit, in *United States v. Midland Independent School District*, 443 F.2d 1180 (5th Cir. 1971) vacated the District Court order and remanded with instructions that the School District be required to adopt a different pupil assignment plan. The lower court then ruled against the plan of the government, which again appealed. For a second time the Court of Appeals reversed and remanded with directions, *United States v. Midland Independent School District*, 519 F.2d 60 (5th Cir. 1975). After the second remand, a special master was appointed by the District Court and – possibly under the duress of the two Fifth Circuit rulings – the parties entered into a consent decree approved by the District Court on September 16, 1976 which detailed plans for a second reorganization of the school system (App. 22a).

Up to the point where the School District consented to this decree, the interest of these petitioning parents had been sufficiently represented by the school board's pleading of the jurisdictional issue. But, by the consent agreement the board abandoned that defense and petitioners thereupon applied to the U.S. Court of Appeals for the Fifth Circuit for a writ of mandamus to compel the District judge to show cause why the consent decree should not be set aside as void for lack of jurisdiction in his Court. The Fifth Circuit denied their petition and review of that Court of Appeals decision is now sought in this Court.

## REASONS FOR GRANTING THE WRIT

1. The acceptance of jurisdiction over the second case by the District Court and the Fifth Circuit were both directly contrary to the holdings of this Court that federal jurisdiction in school desegregation cases arises solely



out of the equal protection provision of the Constitution and that once a school district has achieved a unitary system, the courts are without further jurisdiction absent subsequent unconstitutional action.

> "The basis of our decision must be the prohibition of the Fourteenth Amendment that no State shall deny to any person within its jurisdiction the equal protection of the laws.
>
> . . . .
>
> Absent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis.
>
> . . . .
>
> At some point these school authorities and others like them should have achieved full compliance with this Court's decision in Brown I. The systems would then be 'unitary' in the sense required by our decisions in Green (Green v. County School Board, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed. 2d 716) and Alexander (Alexander v. Holmes County Board of Ed., 396 U.S. 19, 90 S.Ct. 29, 24 L.Ed. 2d 19)."
>
> *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 18, 28, 31, 91 S.Ct. 1267, 1277, 1282, 1283, (1971)

"While the district court found such a violation in 1970, and while this unappealed finding afforded a basis for its initial requirement that the defendants prepare a plan to remedy such racial segregation, its adoption of the Pasadena Plan in

1970, establishing a racially neutral system of student assignment in PUSD. Having done that, we think that in enforcing its order so as to require annual re-adjustment of attendance zones so that there would not be a majority of any minority in any Pasadena Public School, the District Court exceeded its authority."

*Pasadena City Board of Ed. v. Spangler*, 427 U.S. 424, 96 S.Ct. 2697 (1976)

2. The assumption of continuing jurisdiction by the Court of Appeals contradicts the position taken by the Fourth Circuit in *Wheeler v. Durham County Board of Ed.*, 521 F.2d 1136, 1140-1, (4th Cir. 1975).

"If we were to agree to the basic ruling that the city's system had become unitary, we could not sanction the District Courts continuing role in 'directing' future revised plans to be filed for its 'approval' but instead would have to order dismissal of the action under Swann."

*Wheeler v. Durham County Board of Ed.*, 521 F.2d 1136, 1140-1, (4th Cir. 1975)

3. The question of federal law is important and should be decided now by this Court. Although it would seem that your decisions to date are sufficiently clear on the constitutional limitation on federal jurisdiction over desegregation of schools, we know of no other case where this point is directly raised by the record. The *Pasadena* decision came close, but concerned post-decision demographic changes and impossibility. *Swann* looked to the future rather than to the present.



It is of course true that you have given no definitive interpretation of the meaning of "unitary" and may intend that this be continued on an *ad hoc* basis. But the basic requirements apparently combine elements for the correction of past violations and reorganization for future administration. These petitioning Midland school parents argue that in both respects the earlier holding by the District Court – that the school district had achieved a "unitary" condition – were fully satisfied. The 1968 ruling of Judge Guinn (App. 7a) considered each element of the revised organization of the Midland system despite the absence of any appearance in opposition by the former plaintiffs. He went into the evidence of the changes that had been made to reach his conclusion that the last vestiges of the Texas dual school system had been eliminated.

The pre-1968 plan had been submitted to the officials of H.E.W. and the Court found it had been approved by them, quoting their letter to that effect, (App. 10a). Even granting a possibility that the plan might not have been a perfect one in the hindsight light of subsequent educational theory and further assuming that the bringing of the second action by the Attorney General was also done with the approval of H.E.W., the issue raised by this petition remains, namely, whether the changing recommendations for school desegregation as adopted by federal agencies is a sufficient jurisdictional basis for bringing repetitive suits – in other words whether non-state considerations can alter the original constitutional requirements. Your petitioners say "No".

They see the situation as similar to the one in *Pasadena* and like cases where non-state supported actions by individuals have led to resegregative effects. But every such case has been held by this Court to show an insufficient

basis for the reinvocation of federal jurisdiction since segregative state purpose is not involved.

If it be answered that the jurisdiction of federal courts has since 1968 been put on a statutory basis with respect to suits by the Attorney General, (42 U.S.C. § 2000c-6), your petitioners point to the language of the statute itself to the contrary.

> ". . . provided that nothing herein shall . . . enlarge the existing power of the court to insure compliance with constitutional standards."
>
> 42 U.S.C. § 2000c-6(a)

Moreover, if such were claimed to be the case, it would be a clear violation by the Congress of the Ninth Amendment since

> "School authorities are traditionally charged with broad power to formulate and implement educational policy . . ."
>
> *Swann, supra,*
> 402 U.S. 1, 16, 91 S.Ct. 1267, 1276

It is not disputed that desegregation violations occurring after a decree are a sufficient basis for the filing of a second suit. Here there is no such allegation. It must equally be conceded that if the earlier decision was limited to certain grades then a second suit could be filed as to others. That situation does not exist in Midland where the 1968 ruling covered all twelve grades, (App. 10a),

> "All High School students are presently in attendance at two integrated High Schools, Lee



> High School, and no other; all ninth grade students are attending two integrated Junior High Schools, Edison Junior High and Austin Junior High, and no other; all seventh and eighth grade students are presently attending three integrated Junior High Schools, Alamo Junior High, Goddard Junior High, and no other; all elementary students, attending grades one through six, are presently attending neighborhood elementary schools without regard to race, color or National origin."

A third possible basis for the Attorney General's filing of the present suit may be a broader coverage in terms of school districts. On that petitioners would have to concede to this Court that only their own Midland Independent School District was within the 1968 ruling and that the 1970 complaint of the Attorney General names as defendants not only the Texas Education Agency, but many other school districts in addition to Midland (App. 12a). Petitioners did not before the Fifth Circuit, nor do they new before this Court, seek relief as to any other body or entity than the Midland District itself.

## CONCLUSION

Once a school district has been finally found by a District Court to have eliminated all vestiges of past discrimination and to have implemented a plan to the point of being unitary in character, federal jurisdiction ceases. It was error for the District Court and Court of Appeals to have asserted jurisdiction over the 1970 case and petitioners' application for mandamus to correct that error should have been granted.

Petitioners pray a reversal of the order of the Fifth Circuit which denied their petition.

Respectfully submitted,

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*Of Counsel*
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Odessa, Texas 79761

February 17, 1977



IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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**No. 76-3974**

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In Re:

DON YOUNG, ET AL.,

Petitioners.

---

**On Petition for Writ of Mandamus to the United States District Court for the Western District of Texas**

---

Before WISDOM, COLEMAN and TJOFLAT, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the petition for writ of mandamus is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

| | | |
|---|---|---|
| In re: DON YOUNG, BETTY YOUNG, | X | |
| JON EDMONSON, BARBARA EDMONSON, | X | |
| BOBBY McKEE, BARBARA McKEE, | X | |
| DON SPARKS and GWYN SPARKS, | X | |
| Petitioners | X | |
| | X | |
| UNITED STATES OF AMERICA | X | No. _____ |
| | X | |
| vs. | X | |
| MIDLAND INDEPENDENT SCHOOL | X | |
| DISTRICT and JAMES H. MAILEY, | X | |
| SUPERINTENDENT, Respondents | X | |

## PETITION FOR WRIT OF MANDAMUS

I

The jurisdiction of this court is founded on Title 28 USC, Section 1651, exercisable pursuant to Rule 21 of the Federal Rules of Appellate Procedure.

II.

Petitioners Don and Betty Young, parents of Debra Young; Jon and Barbara Edmonson, parents of Joan Lynn Edmonson; Bobby and Barbara McKee, parents of Kari McKee and Leslie McKee; and Don Sparks (a member of the Board of Trustees of the Midland Independent School District, but not acting in that capacity) and Gwyn Sparks, parents of Todd Sparks; are all citizens of the United States, residents of Midland County, Texas, their children are pupils



in the public schools of such county, and they file this Petition for themselves and on behalf of all parents similarly situated.

III.

Petitioners and their children, by reason of the matters hereinafter alleged, have been deprived of the assistance of counsel and equal protection of the law as guaranteed by the Fifth and Sixth Amendments of the Constitution of the United States

IV.

Petitioners are members of the parent class which, until September 16, 1976, was represented in this action in the court below by the named defendants, James H. Mailey and the Midland Independent School District.

V.

In the action is the lower court, the defendants James H. Mailey and Midland Independent School District pleaded, as their fourth defense, that the court lacked jurisdiction in that a final judgment had been entered on October 8, 1968, by the District Court of the United States in the Western District of Texas, Civil Action 68-53-MO in favor of the Midland Independent School District, holding with respect to the said school district:

> ". . . all vestiges of the dual school system in said district have been eleminated [sic] and a unitary school system now exists. . . The Midland Independent School District has eliminated all discrimination that may have heretofore existed insofar as staff employees, teachers, school

> facilities, equipment and curriculum are concerned. . ." Said District was notified of the approval of the Department of Health, Education and Welfare of such plan for the school year 1968-69, by letter dated July 19, 1968, in which approval said Department pointed out that the implementation of such plan would eliminate all vestigess [sic] of the dual school system in The Midland Independent School District for such school year, and the Court so finds ". . . all elementary students, attending grades one through six, are presently attending neighborhood elementary schools without regard to race, color or national origin."

A copy of said judgment is annexed hereto and marked Exhibit "A".

VI.

On August 24, 1970, a second desegregation suit for the same relief and based on the same claim of unconstitutional discrimination was filed, Civil Action (MO-70-ZA-67), the complaints in which alleged no claim of discrimination arising by reason of any change of the existing plan of desegregation occurring in the period subsequent to October 8, 1968. A copy of such complaint is annexed hereto and marked Exhibit "B".

VII.

On August 12, 1976, without reference to the prior decree, the present District Court, pursuant to the direction of this Court (519 F.2d 60, 5 Cir 1975), which required the Midland Independent School District to further desegregate its elementary school facilities and assigned a Special Master to hear the position of the parties. As noted by the court below in this consent decree of September 16, 1976, The Midland Independent School District denies any legal obligation to further desegregate its schools, but abandoned that defense, at the compulsion of the court, to enter into an agreement to further desegregate the schools of the district, which agreement was then made the decree of the court below. A copy of that decree is annexed and marked Exhibit "C".



VIII.

By reason of the judgment of October 8, 1968, the Midland Independent School District had been lawfully found to be unitary in character and had no changes prior to the filing of the second complaint on August 24, 1970. Accordingly, the court below and this court are without jurisdiction to hear and determine the allegations of unconstitutional discrimination presented by the complaint numbered MO-70-CA-67, or to enter any decree or judgment therein.

IX.

Your petitioners are not named parties to the second suit, and until The Midland Independent School District abandoned its jurisdictional defense, were adequately represented by that defendant. The said defendant school district was without authority to so act as to commit petitioners and other parents of children of the public schools of The District to make further alterations in their school system.

X.

By reason of their position herein, your petitioners lack standing to file an appeal in this court for reconsideration or to institute other proceedings to question the jurisdiction of the District Court.

WHEREFORE, Petitioners pray this court to issue a Writ of Mandamus or Quo Warranto directed to the court below to show cause why this decree should not be set aside as void, and for your petitioners to be heard on the issues thereby raised.

Respectfully submitted,

HARMAN & HARMAN

By: /s/ William M. Harman
William M. Harman
112 West Fifth Street
Odessa, Texas 79761

ATTORNEYS FOR PETITIONERS

[Certificate of Service]



EXHIBIT "A"

[Filed October 8, 1968]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

| | |
|---|---|
| JOE L. WILLIAMS, ET AL, Plaintiffs | * |
| VS. | * CIVIL ACTION 68-53-MO |
| THE MIDLAND INDEPENDENT SCHOOL DISTRICT, ET AL, Defendants | * MICROFILMED * Reel No. 27 |

JUDGMENT

On this 8th day of October, 1968, in the above entitled and numbered cause, wherein JOE L. WILLIAMS, as next friend of Robert Louis Williams, Janice Marie Williams, Lorie Ann Williams and Joe L. Williams, Jr. and D. W. Mims, as next friend of Harvey Ray Mims, are Plaintiffs, and THE MIDLAND INDEPENDENT SCHOOL DISTRICT, HAROLD H. HITT, GILBERT C. TOMSON, MARGARET COWDEN, JACK RUSSELL, EUGENE KNIGHT, GEORGE LANDRETH, JACK MATTHEWS and MARTIN G. BROWNE, as Superintendent and members of the Board of Trustees of The Midland Independent School District, respectively, are Defendants, came the Defendants through their attorney of record, but came not the Plaintiffs who have been duly and legally served with Defendants' Motion

for Summary Judgment filed herein, said Plaintiffs not appearing in reply to said motion, but wholly making default thereon, and came on to be heard said Defendants' Motion for Summary Judgment duly filed in this cause, said motion having been on file for a period in excess of ten days. The argument of counsel thereon being heard, the Court finds that said motion has been duly filed and that Plaintiffs have been duly served in the manner and for the time required by law; that said Plaintiffs have failed to reply to said motion and have failed to make an appearance in reply to said motion. The Court having considered said motion and having examined the pleadings, heard the evidence and argument of counsel, makes additional findings as follows:

1. The Midland Independent School District, under the authorization of its Board of Trustees, has continuously acted with integrity and good faith in seeking a method to bring about effective desegregation in said District, and in particular during the period from 1965 subsequent to the passage of the Civil Rights Act of 1964 by the Congress of the United States.

2. Said District, with the guidance of the Department of Health, Education and Welfare has fashioned a plan to eliminate the heretofore existing dual system of education and has adopted and implemented such plan, the details of which are included as an exhibit filed among the pleadings in this cause.

3. As a result of such plan, all vestiges of the dual school system in said District have been eliminated and a unitary school system now exists. In this connection the Court finds that, in the Junior and Senior High Schools of said District there are no minorities representing a majority of pupils in attendance in said schools; that in the Alamo Junior High School the Latin American and Negro



minorities comprise approximately 20.28% of the students in attendance and the Anglo attendance is 79.72%; that in the Goddard Junior High School the Latin American and Negro minorities comprise approximately 15.19% of the students in attendance and the Anglo attendance is 84.81%; that in the San Jacinto Junior High School the Latin American and Negro minorities comprise approximately 22.97% of the students in attendance and the Anglo attendance is 77.03%; that in the Austin Junior High School the Latin American and Negro minorities comprise approximately 18.23% of the students in attendance and the Anglo attendance is 81.77%; that in the Edison Junior High School the Latin American and Negro minorities comprise approximately 20.97% of the students in attendance and the Anglo attendance is 79.03%; that in the Lee High School the Latin American and Negro minorities comprise approximately 8.63% of the students in attendance and the Anglo attendance is 91.37%; and that in the Midland High School the Latin American and Negro minorities comprise approximately 27.39% of the students in attendance and the Anglo attendance is 72.61%.

4. Carver Junior-Senior High School, formerly attended by Negro students exclusively, has been closed and, without prejudice to any of its pupils or staff, said persons theretofore assigned to said school have been proportionately distributed among the other Junior High Schools and High Schools as referred to in the foregoing finding.

5. The Midland Independent School District has eliminated all discrimination that may have heretofore existed insofar as staff employees, teachers, school facilities, equipment and curriculum are concerned and under such plan as has been implemented, all employment of teaching personnel

and staff and the assignment and promotion of such persons as well as the dismissing of such professional staff as has become necessary, have been accomplished without regard to race, color or National origin and without discrimination toward any person or persons.

6. Said District was notified of the approval of the Department of Health, Education and Welfare, of such plan for the school year 1968-69, by letter dated July 19, 1968, in which approval said Department pointed out that the implementation of such plan would eliminate all vestiges of the dual school system in The Midland Independent School District for such school year, and the Court so finds.

7. All High School students are presently in attendance at two integrated High Schools, Lee High School and Midland High School, and no other; all ninth grade students are attending two integrated Junior High Schools, Edison Junior High and Austin Junior High, and no other; all seventh and eighth grade students are presently attending three integrated Junior High Schools, Alamo Junior High, Goddard Junior High, and San Jacinto Junior High, and no other; all elementary students, attending grades one through six, are presently attending neighborhood elementary schools without regard to race, color or National origin.

8. All students residing more than two miles from the school to which they have been assigned are being furnished transportation without regard to race, color or National origin.

9. There is no material issue of fact to be determined by this Court that would permit the relief prayed for by



Plaintiffs in this cause and Defendants are entitled to a judgment as a matter of law.

The Court further finds that the law is in all things in favor of the Defendants and that they are entitled to judgment in their behalf.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED by the Court that Defendants' Motion for Summary Judgment be, and it hereby is, sustained; that this cause be, and it hereby is, dismissed with prejudice, and that Plaintiffs take nothing by their suit, and that Defendants go hence with their costs.

ENTERED AND ORDERED of record the 8 day of October, 1968.

/s/ Ernest Guinn
Judge Presiding

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

[Filed Aug 24, 1970]

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE TEXAS EDUCATION AGENCY, Dr. J.W. EDGAR, Commissioner of Education; AUSTIN INDEPENDENT SCHOOL DISTRICT, IRBY B. CARRUTH, Superintendent, CALVERT INDEPENDENT SCHOOL DISTRICT, FRANK G. KEMBLE, Superintendent; ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT, FLOYD D. MANRY, Superintendent; HEARNE INDEPENDENT SCHOOL DISTRICT, GARLAND G. GRANT, Superintendent; LA VEGA INDEPENDENT SCHOOL DISTRICT, HENRY L. CRANFILL, JR., Superintendent; *MIDLAND INDEPENDENT SCHOOL DISTRICT, DR. JAMES H. MAILEY, Superintendent;* TEMPLE INDEPENDENT SCHOOL DISTRICT, ACE ALSUP, Superintendent,

Defendants.

CIVIL ACTION
NO. A-70-CA-80
MO-70-CA-67

COMPLAINT

The United States of America alleges that:

1. This action is brought by the Attorney General on behalf of the United States pursuant to Section 407 of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6, and the Fourteenth Amendment to the Constitution of the United States.

2. This Court has jurisdiction of this action under 28 U.S.C. 1345 and 42 U.S.C. 2000c-6.



3. The Texas Education Agency is an agency of the State of Texas and is responsible for the general administratioan and supervision of public schools of the State of Texas.

4. Dr. J. W. Edgar is the Commissioner of Education and as such is the chief administrative officer of the Texas Education Agency. He resides in the State of Texas.

5. Each of the defendant school districts, Austin Independent School District, Calvert Independent School Distract, Ector County Independent School District, Hearne Independent School District, La Vega Independent School District, Midland Independent School District, and Temple Independent School District, is an agency of the State of Texas and is responsible under Texas law for general supervision and administration of the public schools within its geographic area.

6. Defendants Irby B. Carruth, Frank G. Kemble, Floyd D. Manry, Garland G. Grant, Henry L. Cranfill, Jr., Dr. James H. Mailey and Ace Alsup are superintendents of schools for the defendant school districts named in paragraph 5 of this complaint and are responsible for the general management of the public schools in the defendant school districts under the direction and supervision of the districts' boards of trustees and under direction and supervision of the State of Texas, its agents and officers.

7. The Texas Education Agency is responsible for the operation of the statewide system of public schools in the State of Texas. The Texas Education Agency is comprised of the State Board of Education, the State Board of Vocational Education, State Commissioner of Education and State Department of Education. The state

has created local public school systems, resonsible on the local level for the operation of public schools.

8. The defendant school districts have received and continue to receive substantial state and federal financial aid.

9. With the knowledge and consent of the Texas Education Agency, its agents and officers, each of the defendant school districts, as instrumentalities of the State of Texas, has traditionally operated and continues to operate a dual school system based on race. The defendant school districts have traditionally assigned students and faculty to schools in accordance with an official state policy requiring racial segregation in the public schools of Texas resulting in the assignment of white students and faculty and black students and faculty to separate schools. These districts presently assign students to these public schools on the basis of plans which have resulted in the continued operation of their schools as dual school systems based on race.

10. The assignment policies of the defendant school districts as described in paragraph 9, have failed to eliminate the dual school system based on race, as indicated by Exhibit A attached to this complaint setting forth the number, race and ethnic origin of the students enrolled in each of the school districts, the number, race and ethnic origin of their faculties and the number of students attending desegregated schools in each district.

11. In addition to those policies and practices alleged in paragraphs 9 and 10, defendant school districts Austin Independent School District, Ector County Independent School District, and Midland Independent School District are discriminating against Mexican-American students by



assigning Mexican-American students to schools on the basis of their ethnic origin. As indicated by Exhibit B these districts are maintaining schools that are identifiable as Mexican-American schools, and schools that are attended almost exclusively by Mexican-American and Negro students.

12. Upon information and belief, each of the defendant districts intends to continue the use of a plan of student and faculty assignment which perpetuates the dual school system.

13. The continued assignment of students and faculty in these districts on a basis which will serve to perpetuate the dual school system deprives the black and Mexican-American students in each of the districts of equal educational opportunities in violation of the Fourteenth Amendment to the Constitution of the United States.

14. There are educationally sound alternative methods of student assignment available to the defendants such as geographic zoning, pairing, or consolidation which, if properly used, promise immediate conversion to a unitary, nonracial school system.

15. The Attorney General of the United States has certified that he has received complaints in writing signed by parents of minor black children residing in the State of Texas, alleging in effect that such children are being deprived of the equal protection of the laws in the operation of the public schools of the State; that the signers of the complaints are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief; that the Texas State Board of Education has been notified of the complaints, that he is satisfied that the Texas State Board of Education has had a reasonable length of time

to adjust the conditions alleged in the complaints; and that in his judgment, the initiation of this action will materially further the orderly achievement of desegregation in public education. The certificate of the Attorney General is attached to this complaint.

16. Unless restrained by order of this Court the defendants will continue to maintain and operate a dual school system based on race, denying Negro and Mexican-American children the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, plaintiff prays that this Court enjoin the defendants, and each of them, their officers, agents, employees, successors, and all persons in active concert or participation with them from discriminating against black and Mexican-American children attending the public schools in the defendant districts on the basis of race and ethnic origin and require them to take affirmative action to disestablish that dual system of schools based on race and ethnic origin and to correct the effects of past discrimination based on race and ethnic origin. Plaintiff further prays that the defendant school districts be ordered forthwith to adopt and implement plans to accomplish this result prior to the commencement of the 1970-71 school year.

Plaintiff further prays that this Court grant such additional relief as the interest of justice may require, together with the costs and disbursements of this action.

/s/ John N. Mitchell
JOHN N. MITCHELL
Attorney General



/s/ Seagal V. Wheatley
SEAGAL V. WHEATLEY
United States Attorney

/s/ Jerris Leonard
JERRIS LEONARD
Assistant Attorney General

/s/ Brian K. Landsberg
BRIAN K. LANDSBERG
Attorney
Department of Justice
Washington, D.C. 20530

/s/ Joseph D. Rich
JOSEPH D. RICH
Attorney
Department of Justice
Washington, D.C. 20530

## CERTIFICATE OF THE ATTORNEY GENERAL OF THE UNITED STATES

I, John N. Mitchell, Attorney General of the United States, hereby certify that I have received complaints in writing signed by parents of minor children alleging, in effect, that said children are being deprived of the equal protection of the laws in the operation of the public schools of the State of Texas; that these parents and minor children are residents of Texas; that I believe the complainants are unable, in my judgment, to initiate and maintain appropriate legal proceedings for relief; that the State Board of Education has been notified of the complaints; that I am satisfied that said State Board of Education has had a reasonable time to adjust the conditions alleged in the complaints; and that in my judgment, the institution of this action will materially further the orderly achievement of desegregation in public education.

Signed this 7th day of August, 1970.

/s/ John N. Mitchell
JOHN N. MITCHELL
Attorney General

EXHIBIT A

| School District | 1969-70 Student Enrollment % Anglo | % Black | % Mexican American | % Other | 1969-70 No. of Teachers Anglo (%) | Black (%) | Mexican American (%) | Total | Anglo teachers teaching in schools with over 50% minority enrollment | Minority group teachers teaching in schools with over 50% Anglo enrollment Black | Mexican American |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Austin ISD (Travis Co.) | 65.2 | 14.8 | 19.8 | .2 | 1930 (82.7) | 344 (14.7) | 57 (2.4) | 2334 1/ | 434 | 97 | 17 1/ |
| Calvert ISD (Robertson Co.) | 23.6 | 65.1 | 11.3 | 0.0 | 15 (46.9) | 17 (53.1) | 0 | 32 | 0 | 2 | -- |
| Ector Co. ISD | 77.9 | 6.2 | 15.8 | .1 | 1069 (92.2) | 70 (6.0) | 19 (1.6) | 1159 2/ | 176 | 10 | 10 2/ |
| Hearne ISD (Robertson Co.) | 40.2 | 47.4 | 12.4 | 0.0 | 56 (72.7) | 21 (27.3) | 0 | 77 | 26 | 1 | -- |
| LaVega ISD (McLennan Co.) | 45.9 | 49.8 | 3.9 | .4 | 82 (48.8) | 85 (50.6) | 1 (.6) | 168 | 6 | 8 | 1 |
| Midland ISD (Midland Co.) | 76.8 | 11.8 | 11.4 | .1 | 689 (91.0) | 56 (7.4) | 12 (1.6) | 757 | 71 | 33 | 9 |
| Temple ISD (Bell Co.) | 66.4 | 21.6 | 11.7 | .3 | 257 (82.6) | 52 (16.7) | 2 (.6) | 311 | 33 | 18 | 2 |

1/ Figures include three teachers classified as Oriental, two of whom are teaching in schools with over 50% Anglo enrollment.

2/ Figures include one teacher classified as Oriental.

EXHIBIT B

AUSTIN INDEPENDENT SCHOOL DISTRICT

| Schools | Black | Mex-Am. | Anglo |
|---|---|---|---|
| Johnston H.S. (9-12) | 534 | 1111 | 120 |
| Allan Jr. H.S. (7-8) | 443 | 552 | 53 |
| Martin Jr. H.S. (7-9) | 177 | 738 | 9 |
| Allison Elem. (1-6) | 145 | 504 | 37 |
| Becker Elem. (K-6) | 89 | 533 | 238 |
| Brooke Elem. (K-6) | 7 | 551 | 18 |
| Govalle Elem. (K-6) | 156 | 618 | 112 |
| Metz Elem. (K-6) | 5 | 810 | 25 |
| Ortega Elem. (K-6) | 348 | 248 | 20 |
| Palm Elem. (1-6) | 1 | 710 | 21 |
| Zavala Elem. (1-6) | 21 | 531 | 7 |

ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT

| Schools | Black | Mex-Am. | Anglo |
|---|---|---|---|
| Ector Jr. Sr. H.S. (7-12) | 338 | 825 | 181 |
| Blackshear Jr. H.S. (7-9) | 294 | 233 | - |
| Carver Elem. (4-6) | 142 | 122 | - |
| Hays Elem. (1-6) | 254 | 287 | 4 |
| Milam Elem. (1-3) | 159 | 155 | - |
| Rusk Elem. (1-6) | 66 | 317 | 54 |
| Travis Elem. (1-6) | 153 | 389 | 26 |
| Zavala Elem. (1-6) | 82 | 418 | 116 |

MIDLAND INDEPENDENT SCHOOL DISTRICT

| Schools | Black | Mex-Am. | Anglo |
|---|---|---|---|
| Crockett Elem. (K-6) | 213 | 267 | 15 |
| DeZavala Elem. (K-6) | 63 | 340 | 2 |
| Pease Elem. (K-6) | 285 | 80 | 6 |

A true copy of the original, I certify.

DAN W. BENEDICT, Clerk

Deputy.

BY:

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA, PLAINTIFF,

[Filed Sep 16, 1976]

DR. VIOLA COLEMAN, ET AL., INTERVENORS,

VS.

Civil Action
No. MO-70-CA-67

MIDLAND INDEPENDENT SCHOOL DISTRICT AND JAMES H. MAILEY, SUPERINTENDENT, DEFENDANTS

CONSENT DECREE

By order of August 12, 1976, this Court instructed the defendant, Midland Independent School District, to desegregate its elementary school facilities, and appointed Mr. John Skogland the Special Master and Consultant. The Court directed him to meet with the parties and their counsel in an effort to determine whether or not the matters in dispute could be settled by agreement and, in any event, to submit his plans and recommendations to the Court no later than September 17, 1976. Since that time the Master and the parties have met continuously in an effort to resolve this matter. The parties have been unable to agree on the question of which schools the Midland Independent School District is legally obligated to desegregate. However, all parties, being desirous of avoiding further litigation on this and other issues, have agreed to the following plan for desegregation of the Midland Independent School District elementary schools:

1. The children in Kindergarten through Third Grade will attend neighborhood schools in accordance with Board policy and attendance zones,, at all nineteen (19)



elementary schools in the Midland Independent School District, except as otherwise agreed to herein.

2. Carver School will be reconditioned and reopened, as "The Carver Cultural Exchange Center", on a full-time basis, for use as a Cultural Exchange Center for all Kindergarten through Third Grade children in the District, and for such other school uses as the School District may determine. The use to be made of this Carver Cultural Exchange Center is more fully set out in Exhibit "A", attached hereto and made a part hereof for all purposes of this decree.

3. There shall be desegregative activities for students in Kindergarten through the Third Grade on the following basis: a minimum of eight desegregative activities per year for all Kindergarten through Third Grade students, with at least two visits per student to the Carver Cultural Exchange Center, and at least six other visits per student (one every six weeks). Three of the six visits shall be on-campus visits within the Fourth through Sixth Grade cluster or subcluster. There shall also be joint field trips. All activities shall be arranged on a desegregated basis. The desegregative field activity referred to at the Carver Cultural Exchange Center herein shall be a regular full school day activity.

4. Grades Four through Six shall be totally desegregaged in accordance with the plan attached hereto as Exhibit "B", and made a part hereof for all purposes of this lawsuit.

5. No schools are closed pursuant to implementation of this decree, and it is not anticipated that any schools will be closed by the implementation of this

plan in the future by Midland Independent School District. This decree shall not prevent Midland Independent School District from proceeding with its contemplated sale for the former North Elementary School. No bus route changes are contemplated and none will be implemented unreasonably without prior approval of the Court.

6. Existing bilingual programs will be expanded where possible, with the quality of such programs maintained, and such programs will follow reassigned pupil groups, unless the School District finds such relocation to be unnecessary.

7. The plans attached hereto as exhibits, and as agreed to in this Consent Decree, shall be implemented at the beginning of the 1977-1978 School Year by the Midland Independent School District. During the 1976-1977 School Year, however, and in preparation for the beginning of the 1977-1978 School Year, the Midland Independent School District will implement certain preliminary plans, as set out in Exhibit "C", which is attached hereto and incorporated herewith for all purposes of this lawsuit.

8. The Midland Independent School District shall publicize and make other appropriate arrangements to encourage elementary students in the Midland Independent School District to take advantage of a Majority-Minority Transfer Program with transportation provided for students electing to make such a transfer.

9. The Court shall retain jurisdiction of this case in order to monitor implementation of this Decree. The School District shall make periodic reports to



the Court on its plans made pursuant to this Decree and on the implementation of such plans, as set out in Exhibit "D" attached hereto.

10. It is further agreed that this Consent Decree resolves the issue among the parties finally and completely and that no party shall appeal therefrom, nor further litigate this matter except upon issues of noncompliance.

The Court, having been advised of the agreement of the parties and being of the opinion that the agreement should be approved and that this Consent Decree should be entered it is THEREFORE, ORDERED, ADJUDGED and DECREED that this Consent Decree and the same is in all things approved on this the 16th day of September, 1976.

/s/ D. W. Smith
Presiding Judge

APPROVED AS TO FORM
AND SUBSTANCE:

/s/ Yoshinori H. T. Himel
Joseph D. Rich
Yoshinori H. T. Himel

ATTORNEYS FOR PLAINTIFF
UNITED STATES OF AMERICA

CUNNINGHAM, GREENIDGE & GAINES

By /s/ E. Brice Cunningham
E. Brice Cunningham

ATTORNEYS FOR INTERVENORS
DR. VIOLA COLEMAN, et al.

MIDLAND INDEPENDENT SCHOOL
DISTRICT

By /s/ Joe Dominey
Joe Dominey, President

/s/ Dr. James. H. Mailey
Dr. James H. Mailey

/s/ Thornton Hardie, Jr.
Thordon Hardie, Jr.

/s/ Charles Tighe
Charles Tighe

ATTORNEYS FOR DEFENDANTS

---



IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA, [Filed Aug. 24, 1970]

Plaintiff,

v.

THE TEXAS EDUCATION AGENCY, DR. J. W. EDGAR, Commission of Education; AUSTIN INDEPENDENT SCHOOL DISTRICT, IRBY B. CARRUTH, Superintendent; CALVERT INDEPENDENT SCHOOL DISTRICT, FRANK G. KEMBLE, Superintendent, ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT, FLOYD D. MANRY, Superintendent; HEARNE INDEPENDENT SCHOOL DISTRICT, GARLAND G. GRANT, Superintendent; LA VEGA INDEPENDENT SCHOOL DISTRICT, HENRY L. CRANFILL, JR., Superintendent; MIDLAND INDEPENDENT SCHOOL DISTRICT, DR. JAMES H. MAILEY, Superintendent; TEMPLE INDEPENDENT SCHOOL DISTRICT, ACE ALSUP, Superintendent,

Defendants.

CIVIL ACTION
NO. MO-70-CA-67

## ANSWER OF DEFENDANTS DR. JAMES H. MAILEY AND MIDLAND INDEPENDENT SCHOOL DISTRICT

Dr. James H. Mailey, Superintendent, and Midland Independent School District, Defendants in the above entitled and numbered cause, make answer and present their defenses against Plaintiff's Complaint, and for such answer say:

## FIRST DEFENSE

These Defendants deny the allegations in Plaintiff's Complaint wherein it is alleged that these Defendangs have been making assignment of students and faculty in a manner to perpetuate a dual school system in violation of the 14th Amendment to the Constitution of the United States, and said Defendants assert that whatever assignments of students that has been made has been made on the basis of zoning elementary schools for the purpose of preserving neighborhood schools for, and on behalf of, each and every pupil of elementary school age. These Defendants further state that through no choice or action on their part, citizens of Midland County and the City of Midland have so situated themselves in areas of their own choice that certain ethnic groups have gathered themselves together and occupied certain areas of the City of Midland. In particular, the Mexican-American citizens have chosen to occupy portions of the southeastern part of the City of Midland and the east and northeast portions. The negro families have chosen to occupy the extreme southeastern portion of Midland, as well as portions of the northeastern part of the city. This has resulted in what is known in law as de facto segregation and has not been brought about by any action, rule, ordinance, regulation, or option initiated or exercised by these Defendants. These Defendants, therefore, assert that they are not in violation of the 14th Amendment to the Constitution of the United States and that, therefore, these Defendants being in compliance under the laws of the State of Texas and the United States of America, in all other respects, the Plaintiff has not stated a cause of action upon which relief can be granted as prayed for in the Complaint.



## SECOND DEFENSE

Further answering herein, these Defendants admit and deny as follows:

1. They admit:

(a) The allegations contained in Paragraph 3 of Plaintiff's Complaint concerning the Texas Education Agency of the State of Texas.

(b) The allegations contained in Paragraph 4 of said Complaint regarding the Commissioner of Education of the State of Texas and his residence in said state.

(c) The allegations in Paragraph 5 of said Complaint wherein it is asserted that the defendant school districts are agencies of the State of Texas and responsible under Texas law for general supervision and administration of the public schools in their areas.

(d) The allegations contained in Paragraph 6 of said Complaint.

(e) The allegations contained in Paragraph 7 of said Complaint.

(f) The allegations contained in Paragraph 8 of said Complaint.

2. These Defendants deny:

(a) The allegations contained in Paragraph 1 of said Complaint wherein Plaintiff alleges such action being brought pursuant to the 14th Amendment to the Constitution of the United States.

(b) The allegations contained in Paragraph 2 of said Complaint wherein Plaintiff asserts this Court has jurisdic-

tion of such action, these Defendants specially denying that, under the facts and circumstances existing in the Midland Independent School District, that the 14th Amendment has been violated in any way.

(c) The allegations contained in Paragraph 9 of said Complaint wherein Plaintiff asserts that these Defendants are operating a dual school system based on race.

(d) The allegations contained in Paragraph 10 of said Complaint wherein Plaintiff alleges these Defendants have failed to eliminate a dual system.

(e) The allegations contained in Paragraph 11 of said Complaint.

(f) The allegations contained in Paragraph 12 of said Complaint wherein Plaintiff asserts these Defendants intend to continue a plan which would perpetuate a dual system.

(g) The allegations contained in Paragraph 13 of said Complaint wherein Plaintiff asserts the assignment of students and faculty to be contrary to the guarantees of the 14th Amendment to the Constitution of the United States.

(h) The allegations contained in Paragraph 16 of said Complaint wherein Plaintiff asserts that these Defendants will continue to operate a dual system based on race unless restrained by order of this Court.

3. Being without sufficient information to form a belief, these Defendants neither admit nor deny the allegations contained in Paragraph 15 of said Complaint, and these Defendants state that Plaintiff should be called upon to present proof of such allegations.



4. Other than as above set out, these Defendants deny the allegations contained in Plaintiff's Complaint.

## THIRD DEFENSE

These Defendants say that contrary to the allegations contained in Plaintiff's Complaint these Defendants have been making a determined effort through the past years to eliminate the dual system of education that may have existed in the Midland Independent School District and have been working diligently to bring about a condition in said District which would provide for all of its pupil population, without regard to race, color or creed, the best possible education from the elementary school through the high school credits. In this connection these Defendants say that they have made a continued effort to provide a system of integrated facilities, teaching personnel, staff members and pupil assignment for the entire District involved and have been, in the past many months, working toward a unitary system of education, not always obtaining approval of its own citizens or of the Department of Health, Education and Welfare, but continuing their efforts so as to comply with the mandate of the Congress of the United States and the United States Supreme Court. These Defendants would point out that some two years ago they obtained approval of the plan as submitted to the Department of Health, Education and Welfare. Finally, these Defendants would point out to the Court that many of the complaints as asserted by Plaintiff have no longer any foundation in fact; that to a large extent, the matters complained of have been acted upon by these Defendants who have devoted their efforts to the end that all segregation of any kind or character be eliminated from the Midland Independent School District.

## FOURTH DEFENSE

Further answering herein, these Defendants state that on or about the 8th day of October, 1968, in Civil Action 68-53-MO, styled Joe L. Williams, et al, vs. Midland Independent School District, et al, this Court rendered final judgment finding, among other things, that the plan then being used by these Defendants removed "all vestiges of the dual school system in said district. ." and "a unitary school system now exists." To this Answer is attached a certified copy of said judgment, such copy being referred to herein, made a part of this Answer for all purposes, and marked Exhibit "A".

These Defendants state that because of such judgment finding that these Defendants were free of any violation and because of such judgment finding that these Defendants had eliminated all vestiges of a dual school system and because of the other findings therein contained, Plaintiff is estopped to assert any allegations to the contrary and said judgment has become the law of this case as to these Defendants and Plaintiff may not under law complain as against these Defendants and assert allegations contrary to this Court's previous findings.

WHEREFORE, having fully answered these Defendants pray that Plaintiff take nothing by its suit and that these Defendants go hence with their costs.

/s/ Thornton Hardie, Jr.
Thornton Hardie, Jr.
of
TURPIN, SMITH, DYER, HARDIE & HARMAN
P.O. Box 913, Midland, Texas 79701
Attorneys for Defendants

[Certificate of Service]



**42 U.S.C. § 2000c-6. Civil actions by the Attorney General–Complaint; certification; notice to school board or college authority; institution of civil action; relief requested; jurisdiction; transportation of pupils to achieve racial balance; judicial power to insure compliance with constitutional standards; impleading additional parties as defendants.**

(a) Whenever the Attorney General receives a complaint in writing–

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate dis-

trict court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction or proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure complaince with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

**Persons unable to initiate and maintain legal proceedings**

(b) The Attorney General may deem a person or persons unable to intiiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

**"Parent" and "complaint" defined**

(c) The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is a writing or document within the meaning of section 1001, Title 18.

Pub.L. 88-352, Title IV, § 407, July 2, 1964, 78 Stat. 248; Pub.L. 92-318, Title IX, § 906(a), June 23, 1972, 86 Stat. 375.

Supreme Court, U. S.
FILED
APR 5 1977
MICHAEL RODAK, JR., CLERK

No. 76-1140

# In the Supreme Court of the United States

OCTOBER TERM, 1976

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DON YOUNG, ET AL., PETITIONERS

*v.*

MIDLAND INDEPENDENT SCHOOL DISTRICT, ET AL.

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

---

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

---

WADE H. MCCREE, JR.,
*Solicitor General,*
*Department of Justice,*
*Washington, D.C. 20530.*

# In the Supreme Court of the United States

OCTOBER TERM, 1976

---

No. 76-1140

DON YOUNG, ET AL., PETITIONERS

*v.*

MIDLAND INDEPENDENT SCHOOL DISTRICT, ET AL.

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

---

**MEMORANDUM FOR THE UNITED STATES IN OPPOSITION**

---

Petitioners, parents of students in a Texas school district, seek review of the denial of their petition for a writ of mandamus. That petition asked the court of appeals to set aside a consent decree entered in a school desegregation suit brought by the United States. This consent decree (Pet. App. 22a-26a) implemented two decisions of the court of appeals requiring desegregation of the Midland Independent School District.[1] Since petitioners are not parties to the underlying school desegregation case, the court of appeals properly declined to hear their objections to the consent decree.

---

[1] *United States* v. *Midland Independent School District*, 443 F. 2d 1180 (C.A. 5); *United States* v. *Midland Independent School District*, 519 F. 2d 60 (C.A. 5), certiorari denied, 424 U.S. 910.

1. Petitioners were not entitled to use mandamus to abrogate the consent decree in a case to which they are not parties. At approximately the same time as they sought mandamus from the court of appeals, they also moved to intervene, in the district court, in the underlying school desegregation case brought by the United States. The district court has denied their motion to intervene (App., *infra*, p. 1a). Petitioners are entitled to appeal that denial, and, if the court of appeals should direct that they be made parties to the case, they would be entitled to challenge the consent decree. Under these circumstances petitioners' request for extraordinary relief was properly denied. *Ex Parte Fahey*, 332 U.S. 258.

2. In any event, petitioners' arguments against the consent decree are insubstantial. They apparently contend (Pet. 4-5) that a 1968 judgment in a school desegregation suit brought by private persons operated as a bar to the suit brought in 1970 by the United States. But the United States was neither a party nor in privity with a party to the 1968 litigation, and that judgment therefore could not preclude a subsequent action by the United States.

The 1971 and 1975 decisions of the court of appeals, holding that further relief is required,[2] relied on *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, and *Keyes* v. *School District No. 1, Denver, Colorado*, 413 U.S. 189, cases decided after the 1968 private suit. It is settled that school districts must comply with such subsequent decisions of this Court (see, *e.g.*, *Ellis* v. *Board of Public Instruction of Orange County, Florida*, 465 F. 2d 878 (C.A. 5), certiorari denied, 410 U.S. 966), and petitioners do not suggest any reason why this

[2]See note 1, *supra*.



principle was not properly applied by the district court in approving the consent decree in the present case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. McCREE, JR.,
*Solicitor General.*

APRIL 1977.

## APPENDIX

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TEXAS**
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA

*vs.*

MIDLAND INDEPENDENT SCHOOL DISTRICT, ET AL.

MO-70CA-67

*ORDER DENYING MOTION TO INTERVENE*

The motion to intervene filed October 29, 1976, by Don and Betty Young, Jon and Barbara Edmonson, Bobby and Barbara McKee, and Don and Gwyn Sparks is DENIED.

The Court notes parenthetically, that a petition for a writ of mandamus to the Fifth Circuit Court of Appeals to set aside the Consent Decree upon the same ground on which intervention is requested was summarily denied on November 29, 1976.

SO ORDERED this 11th day of February, 1977.

/s/ Dorwin Suttle

UNITED STATES DISTRICT JUDGE

FILED:
February 14, 1977
Dan W. Benedict, Clerk
By BOWING PAPER, Deputy

Supreme Court, U. S.
FILED
APR 14 1977
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1140

In re DON YOUNG, BETTY YOUNG, JOHN EDMONSON, BARBARA EDMONSON, BOBBY McKEE, BARBARA McKEE, DON SPARKS and GWYN SPARKS,

*Petitioners,*

UNITED STATES OF AMERICA,

*Plaintiff-Respondents,*

v.

MIDLAND INDEPENDENT SCHOOL DISTRICT and JAMES H. MAILEY, SUPERINTENDENT,

*Defendants.*

## REPLY BRIEF

GEO. S. LEONARD
1019 Nineteenth St., N.W.
Washington, D.C. 20036

BROOKS L. HARMAN
112 West 5th Street
Odessa, Texas 79761

*Counsel for Petitioners*

*Of Counsel*
WILLIAM M. HARMAN
112 West 5th Street
Odessa, Texas 79761

February 17, 1977

IN THE

# Supreme Court of the United States

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**No. 76-1140**

---

In re DON YOUNG, BETTY YOUNG, JOHN EDMONSON, BARBARA EDMONSON, BOBBY McKEE, BARBARA McKEE, DON SPARKS and GWYN SPARKS,

*Petitioners,*

UNITED STATES OF AMERICA,

*Plaintiff-Respondents,*

v.

MIDLAND INDEPENDENT SCHOOL DISTRICT and JAMES H. MAILEY, SUPERINTENDENT,

*Defendants.*

---

## REPLY BRIEF

---

The government's answer says a writ of mandamus is improper where (a) the petitioning parents were not allowed to become parties in the trial court, or (b) the present complainant (i.e. the United States) was not a party to the first case. Neither argument is meritorious under the decisions of this Court.

To avoid laboring the obvious, petitioners of course acknowledge that mandamus is inappropriate where alternative methods of raising the issue – as by appeal – are available, that mandamus is reserved for issues of exceptional importance and is discretionary. Having in mind that the ground for this petition is that there was a total lack of federal jurisdiction in the lower court, the present application is directly in point on each of these grounds.

1. As the government points out, these petitioners have been refused the opportunity to litigate the issue of jurisdiction in the trial court, their petition for intervention having been denied. They have no right of appeal, any review being entirely discretionary. In short, the suggested alternative is a "clearly inadequate remedy" within the terms of *Ex parte Fahey*, 332 U.S. 258 (1947).

2. Petitioners submit that the existence or non-existence of federal court jurisdiction under our dual system – particularly in cases dealing with school desegregation – is a matter of exceptional importance. *Wheeler v. Durham County Bd. of Ed.*, 521 F.2d 1136, 1140-1 (4 Cir. 1975). On the record, any continued existence of this case is improper in that it exceeds "the lawful exercise of [the Court's] prescribed jurisdiction." *Rocke* v. *Evaporated Milk Assn*, 319 U.S. 21, 26 (1943).

And if that is so, then the orders, decrees and judgments which may be issued either on trial or appeal are void, whether or not they adopt current methods of handling segregation cases which did properly come before the courts. The orthodoxy of an order is not a justification for its issuance.

Moreover, the statute grants no other or different jurisdicational basis for an action brought by the United



States in lieu of an individual or class and the government's argument that it was not a party to the first suit appears to be without legal significance.

3. As to the exercise of this Court's discretion in hearing the case, petitioners urge that it be granted in their favor. More and more school systems in this country will achieve the unitary status which this Court has set as the ultimate constitutional goal. The record here is direct and the issue of jurisdiction is clearly presented. If any step is to be taken to ultimately free the federal courts from continuing supervision over the school systems of the country, this is a clear opportunity to fix the terminal limits of that jurisdiction.

/s/ George S. Leonard

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April 13, 1977